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9 **UNITED STATES DISTRICT COURT**
10 **WESTERN DISTRICT OF WASHINGTON**
11 **AT SEATTLE**

12 STATE OF WASHINGTON,

13 Plaintiff,

14 v.

15 UNITED STATES DEPARTMENT OF
16 HEALTH AND HUMAN SERVICES;
ALEX M. AZAR, in his official capacity as
the Secretary of the United States
Department of Health and Human Services,

17 Defendants.
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NO. 2:20-cv-01105

DECLARATION OF
ELAYNE WYLIE

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Pursuant to 28 U.S.C. §1746(2), I, ELAYNE WYLIE, declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct:

1. I am over the age of 18 and competent to testify in this matter.

2. I am the co-founder and current Co-Executive Director of Gender Justice League (“GJL”), a 501(c)3 model organization.

3. organization focused on elevating the rights of transgender and gender diverse people by creating community through advocacy and shared leadership development. Promoting social, economic, and racial justice are at the core of our advocacy work.

4. GJL’s mission is to empower all people to eliminate discrimination and prejudice based on sex, gender identity, gender expression, and sexual orientation in Washington State, and to ensure that transgender and gender diverse people can live their lives safely, true to themselves, and free from discrimination.

5. GJL’s programs include Safe House, a program that provides direct services to transgender, non-binary, and gender diverse communities in Seattle; Trans Pride, a platform providing workshops and resources to the transgender and non-binary communities around the world; HUGs Food Pantry of Thurston County, a food and toiletries delivery service for transgender and non-binary people; Community Town Halls; Insurance Denials Workgroup, providing technical and advocacy assistance with access to culturally competent healthcare; Business Consulting and Trainings; and Advocacy, providing 1-on-1 peer and community-based advocacy to build, grow, train, and mobilize the transgender and gender diverse communities to address systemic oppression.

6. I am submitting this Declaration in support of Plaintiff Washington’s Complaint and Motion for Preliminary Injunction to stop the Department of Health and Human Services rule, entitled “Nondiscrimination in Health and Health Education Programs or Activities,

1 Delegation of Authority,” 85 Fed. Reg. 37160-248 (the “Final Rule”), from taking effect. I am
 2 concerned that the Final Rule will perpetuate systemic discrimination against transgender and
 3 gender nonconforming Washingtonians in healthcare.

4 7. Through my advocacy work at GJL, I have heard numerous stories recounting
 5 specific instances and systemic examples of how discrimination in the healthcare setting against
 6 Washington’s transgender and gender nonconforming individuals impacts our communities.
 7 Members of the LGBTQ community in Washington share that they distrust healthcare providers
 8 and institutions because of the discrimination they have experienced in the healthcare system.
 9 The discrimination we hear about takes a variety of forms, including the outright denial of care,
 10 being mis-gendered, being referred to by the wrong name, and being ridiculed. This hostility to
 11 a person’s identity within the healthcare setting is one reason transgender and gender
 12 nonconforming Washingtonians often do not seek preventive and routine care when they need
 13 it, which leads to poorer health outcomes. For example, one of our clients, a transgender woman
 14 who had badly cut her hand shared the following experience when she arrived at the Harrison
 15 Hospital Emergency Room in Bremerton, Washington:

16 “I was receiving a routine and appropriate workup for the cut on my
 17 hand until they obtained my registration and insurance information.
 18 At that point they identified me through my social security number
 19 as a patient who had been born at that hospital under a different
 20 gender. From that moment on I was treated differently.”

21 “I was ignored by staff when I requested water and I was referred to
 22 as ‘that thing’, ‘it’, and ‘shim’ (a combination of she and him,
 23 presumably). It was clear to me during my visit that the demeanor
 24 of the staff changed once they determined my transgender status.”

25 8. The experience recounted above was so traumatic that the client reported
 26 developing PTSD and anxiety with respect to healthcare institutions that took years of
 counseling to reduce. Her final word:

1 “I have healthcare directives in place such that I could get in a car
2 accident on the street in front of Harrison, and they’d be required to
fly me by chopper to any other hospital in the region.”

3 9. Another GJL client shared the following example of the hostility transgender
4 individuals can face in the healthcare setting in Washington:

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6 “In May I went to the Emergency Room at Swedish Hospital,
7 Edmond’s Campus for mental health services. When the nurse
called me in they did not refer to me by my chosen male identified
8 name and repeatedly referred to me as female. At that time I was far
enough along in my transition that I did not present as female.”

9
10 “Although I did not arrive at Swedish for crisis support, I was put in
a lock down room and treated with hostility, escalating the situation
11 to the point where I no longer felt safe. The nurses and doctor
repeatedly mis-gendered me, referred to me as female, and refused
12 to call me by my chosen name; at one point the doctor rolled his
eyes at me.”

13
14 “I eventually left the hospital, more upset than when I arrived. Had
I arrived at Swedish in an acute mental health crisis, my treatment
there would have endangered my life.”

15
16 “I was so traumatized by my treatment at Swedish, I skipped follow
up appointments at Kaiser because I did not want to be in a
17 healthcare facility.”

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19 10. Although some advancements have been made, the healthcare system in
20 Washington, and across the United States, is largely structured on a binary view of “sex”¹,
21 creating dangerous barriers to needed care. The Final Rule’s rollback of protections against
22 discrimination in healthcare for transgender and gender nonconforming individuals will
23 intensify these barriers. Demonstrating how dangerous barriers to healthcare access can be for

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25 ¹ The 2016 Rule defined “gender identity” as “an individual’s internal sense of gender, which may be
26 male, female, neither, or a combination of male and female, and which may be different from an individual’s sex
assigned at birth.” 81 Fed. Reg. at 31,467 (formerly codified at 45 C.F.R. § 92.4)

transgender and gender nonconforming individuals, I share the following account from a family member desperately seeking services for her at-risk transgender daughter:

“Nine months ago our life as a family changed dramatically when our 12 year old transgender daughter, “B”, began to exhibit signs of mental health distress and suicidal ideation. As “B’s behaviors became more dangerous, for them and the rest of the family, I sought support from numerous treatment centers and crisis intervention programs in the Seattle area. We were repeatedly denied access to critical long-term inpatient care because ‘beds were only available for straight males or females.’”

“This denial of care has put “B” and my family at serious risk of physical, emotional and financial harm.”

11. At GJL we often hear from clients and community members who are confused by denials of care for doctor's visits or prescriptions that should be covered by their insurance. Coverage denials because an individual’s healthcare plan does not cover transgender healthcare services like hormone therapy or surgical procedures is a significant issue, which is why a large part of our work at GJL involves assisting and advocating for those who have had problems with healthcare coverage.

12. It is not uncommon for a transgender person receiving hormone replacement therapy to receive a denial based upon the dosage prescribed by their medical provider. For example, a transgender person may be covered for the dosage that would align with the individual’s gender at birth, but NOT the prescribed dosage appropriate for gender affirming care.

13. Transgender patients often discover this issue when they go to pick up their prescription at the pharmacy. Often the medications prescribed are not available in the dosage strength, brand, or medication type they had expected, and/or what they are given was dispensed by the pharmacy but not covered by the plan.

1 14. A colleague at Planned Parenthood (“PP”) who manages gender affirming care
 2 for Washington, Oregon, Idaho, Alaska, and Hawaii shared that they routinely have transgender
 3 patients come in who have been initially denied appropriate hormone replacement care. In order
 4 to receive that basic care, PP has to go through the administrative process of obtaining pre-
 5 authorizations for hormone prescriptions at dosage levels appropriate for the gender affirming
 6 care.

7 15. According to PP, this extra administrative step was taking an additional 20-30
 8 hours of staff time per week. We are aware that efforts have been made with insurance
 9 companies and the insurance commission to create work-arounds to these initial denials and this
 10 administrative burden. However, if the Final Rule takes effect, rolling back protections against
 11 discrimination for transgender and gender nonconforming individuals, these efforts will be
 12 hampered, creating more confusion and less access to needed healthcare.

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 14 16. If the Final Rule takes effect, experiences like the ones described above will
 15 increase significantly. Discrimination in healthcare against LGBTQ communities is harmful
 16 because it not only creates barriers to access but it contributes to distrust of the healthcare
 17 system and adds to the stress and anxiety experienced by the LGBTQ community when seeking
 18 care.

19 I declare under penalty of perjury under the laws of the United States and the State of
 20 Washington that the foregoing is true and accurate.

21
 22 DATED this 16th day of July, 2020, in Seattle, Washington

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 25 Elayne Wylie
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